

**PT 99-30**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**MARYWOOD  
COMMUNITY  
CENTER, OWNER  
and  
MARYWOOD FIRE  
PROTECTION  
DISTRICT, LESSEE  
APPLICANTS**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 96-45-104**

**Real Estate Tax Exemptions for  
1996 Assessment Year**

**P.I.N.S: 15-11-252-002  
15-11-252-003**

**Kane County Parcels**

**Alan I. Marcus  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Bernard Weiler of Mickey, Wilson, Weiler & Reanzi on behalf of the Marywood Community Center and the Marywood Fire Protection District.

**SYNOPSIS:** This proceeding raises the following issues: (1) does the Marywood Community Center (hereinafter the "Center") qualify as an "institution of public charity" within the meaning of 35 ILCS 200/15-65; (2) does the Center's fee interest in real estate identified by Kane County Parcel Index Numbers 15-11-252-002 and 15-11-252-003<sup>1</sup> qualify for exemption from 1996 real estate taxes under 35 ILCS 200/15-65, wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that said property is "actually and

exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit"; and (3) does the Marywood Fire Protection District (hereinafter the "District") qualify as a "municipal corporation" within the meaning of 35 ILCS 200/15-75; and (4) whether the District's leasehold interest in the subject property qualifies for exemption from 1996 real estate taxes under 35 ILCS 200/15-75, wherein "all market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes" are exempted from real estate taxation.

The controversy arises as follows:

The Center filed an Application for Property Tax Exemption with the Kane County Supervisor of Assessments on August 26, 1996. This application named the Center as applicant and sought exemption for the Center's fee interest in the subject property, which it alleged was used for "Civic Center" purposes. Dept. Group Ex. No. 1, Doc. A; Tr. pp. 43-44.

The District filed a separate Application for Property Tax Exemption with the Kane County Supervisor of Assessments on August 26, 1996. This application named the District as applicant and sought exemption for the District's leasehold interest, which the District alleged was used for "Fire Protection Offices." Dept. Group Ex. No. 1, Doc. A; Tr. pp. 43-44.

The Kane County Board of Review reviewed both applications and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemptions be granted. Dept. Group Ex. No. 1, Doc. A; Tr. pp. 43-44; Applicant Ex. No. 14.

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1. The Center's fee interest in this property shall hereinafter be referred to as the "fee" or the "fee interest"; the property of which that fee is a part shall hereinafter be referred to as the "subject property."

The Department consolidated these Applications<sup>2</sup> under one docket number and rejected the Board's recommendations in a determination dated February 27, 1997. Dept. Ex. No. 2. This determination found that the entire subject property was neither in exempt ownership nor in exempt use. *Id.* Timely appeals to this denial were later filed (Dept. Ex. No. 3) after which evidence was presented at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's exemption denial be affirmed.

### **FINDINGS OF FACT:**

#### **A. Preliminary Considerations and Historical Background**

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. The Department's position in this matter is that the entire subject property, inclusive of the Center's fee interest and the District's leasehold interest, were neither in exempt ownership nor in exempt use. Dept. Ex. No. 2.
3. The subject property is located at 1805 Church Road, Aurora, IL 60504. It was initially improved with a one story, 40' x 60' building that was constructed in 1966. Dept. Group Ex. No. 1, Doc A; Applicant Group Ex. No. 12; Tr. pp. 24-26.

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2. The Kane County Board of Review submitted the two applications, both of which sought exemption for Parcel Index Numbers 15-11-252- 002 *and* 15-11-252-003, to the Department at the same time. Applicant Ex. No. 14. The Department later proceeded to issue only one determination on both applications.

The deed pursuant to which applicant obtained ownership of the subject property (Applicant Ex. No. 7) demonstrates that the subject property consists of both Parcel Index Numbers. These Index Numbers are contiguous to one another (Dept. Group Ex. No. 1, Doc. B) and improved with a single structure that occupies parts of both Index Numbers. *See*, Finding of Fact 4, *infra* at p. 4.

4. A two-story, 20' x 40' addition to the building was constructed in 1986. With this addition, the building, an indivisible structure, occupied an unspecified amount of square footage on Parcel Index Number 15-11-252-002 and an additional amount of unspecified square footage on Parcel Index Number 15-11-252-003. Dept. Group Ex. No. 1, Doc. B; Tr. pp. 24-25, 29; 45-46, 55-57.
5. The building was owned by the District, a municipal corporation and taxing body created pursuant to The Fire Protection District Act, 70 ILCS 705/0.01 *et seq.*, from 1966 until 1995. It was used as a fire station and enjoyed tax exempt status throughout that time. Applicant Ex. Nos. 9, 10; Tr. pp. 31-33.
6. The District conveyed its interest in the subject property to the City of Aurora (hereinafter the "City") on December 14, 1995. This conveyance was part of a larger transaction wherein the City assumed responsibility for providing fire protection services to territories within the District's jurisdiction.<sup>3</sup> Applicant Ex. No. 8; Tr. pp. 32-39, 67-68.
7. Another part of this transaction called for the City to execute a quitclaim deed that vested the Center with a fee interest in the subject property. Tr. pp. 42, 68-69.
8. The Center, an Illinois not-for-profit corporation, began using the first floor of the building as a "community center"<sup>4</sup> after the quitclaim deed was executed on December 14, 1995. Applicant Ex. Nos. 6, 7; Tr. pp. 42, 68-69.

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3 . For details about this transaction, *see*, Findings of Fact 23-28, *infra* at pp. 8-9.

4. For details about the "community center" uses, *see*, Findings of Fact 15-18, *infra* at pp. 6-7.

9. The Center entered into an office lease with the District on January 1, 1996. This leasehold basically allowed the District to rent office space, located on the second floor of the building, from the Center.<sup>5</sup> Applicant Ex. Nos. 3, 9, 10; Tr. p. 42.

B. The Center's Organizational Structure

10. The Center was incorporated under the General Not For Profit Corporation Act of Illinois, (805 **ILCS** 105/101.01 *et seq.*) on March 23, 1995. Its Articles of Incorporation provide that the Center is organized for "civic purposes" pursuant to 805 **ILCS** 105/103.05(5). These Articles do not, however, give any further description of applicant's corporate purposes. Applicant Ex. No. 6.
11. The Articles contain no specific reference to "charity" and are silent as to whether the Center accommodates those who are unable to pay for whatever services it offers. *Id.*
12. The Center has no capital stock or shareholders. It derives revenues<sup>6</sup> from its leasehold with the District and the rental fees it charges community members for private parties. Tr. pp. 74-75, 77, 89, 100.
13. The Center applies whatever revenues it receives toward expenses associated with upkeep of the building, such as property taxes, snow removal, gas, electric, telephone and scavenger service. Tr. pp. 74, 79, 87-90.

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5. For further details about the terms and conditions of the lease, *see*, Findings of Fact 29, *infra* at pp. 9-10.

6. The exact amounts of these revenues are unspecified because the Center did not submit any financial statements.

C. The Center's Ownership Interest and Use of the Subject Property

14. The Center acquired ownership of the subject property pursuant to the terms of a quitclaim deed dated December 14, 1995. Applicant Ex. No. 7.
15. The Center allowed various community members to rent the first floor of the building for Thanksgiving, Christmas, birthday, graduation and other private parties, as well as funeral luncheons, throughout 1996. It charged a fixed rental fee of \$200.00 per event, with \$100.00 of that amount being a refundable security deposit. Tr. pp. 39, 77-79, 95-96.
16. The Center permitted any community member to use the first floor, provided that the individual was able to pay the rental fee. It also allowed various community organizations, such as local Boy and Girl Scout troops, the "Northeast Neighbors",<sup>7</sup> the Knights of Columbus, the Sierra Club, the Western Catholic Union, Neighborhood Watch<sup>8</sup> and the Marywood Annunciation Church, to use the first floor for monthly meetings and other community events.<sup>9</sup> Tr. pp. 63-64, 76, 78-79, 86.
17. The Center allowed these groups to use the building for free. However, the decision to permit rental free uses was (and remains) discretionary with the Center's governing board. Tr. pp. 40, 78-79, 95.

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7. The Northeast Neighbors is a community policing group. Tr. pp. 101-102.

8. Neighborhood Watch is a community group devoted to ensuring the safety of children who walk home from school. Tr. p. 94.

9. For a complete listing of the community organization that used the first floor during 1996, *see*, Tr. pp. 93-94.

18. The Center allowed a karate instructor, who taught free martial arts classes for local youth, to use the first floor free of charge. This instructor cleaned the building in exchange for the rental-free use. Tr. pp. 86-87.

D. The District's Organizational Structure

19. The District is a municipal corporation and taxing body organized pursuant to the Fire Protection District Act, 70 **ILCS** 705/0.01 *et seq.* (hereinafter the "Act").  
Administrative Notice.

20. Section 1 of the Act, 70 **ILCS** 705/1, provides that:

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety welfare and convenience of the public, it is necessary in the public interest to provide for the creation of municipal corporations known as fire protection districts and to confer and vest in the fire protection districts all powers necessary or appropriate in order that they may engage in the acquisition, establishment, maintenance and operation of fire stations, facilities, vehicles, apparatus and equipment for the prevention and control of fire therein and the underwater recovery of drowning victims, and provide as nearly adequate protection from fire for the lives and property within the districts as possible and regulate the prevention and control of fire therein; and that the powers herein conferred upon such fire protection districts are public objects and governmental functions in the public interest.

Administrative Notice.

21. Section 2 of the Act, 70 **ILCS** 705/2, provides that "all courts in this State shall take judicial notice of the existence of all fire protection districts organized under this Act and every such district shall constitute a body corporate and as such may sue or be sued in all courts." Administrative Notice.

22. Section 14 of the Act, 70 ILCS 705/14, authorizes the Board of Trustees, which governs each fire protection district's daily business affairs, to levy and collect taxes for all corporate purposes. Administrative Notice.
23. Until 1995, the District provided fire protection and ambulance services to a series of geographic territories, one of which was Naperville Township in DuPage County. The remaining territories, including Aurora and Batavia Townships, were located in Kane County. Tr. pp. 32-33.
24. The City began annexing some of the District's territories, including Fox Valley Village, in the early 1960s. It continued these annexations throughout the ensuing years. Tr. p. 34.
25. The City "disconnected" these territories from the District by assuming responsibility for providing fire prevention services to the territories it annexed. *Id.*
26. By 1995, the City had annexed and disconnected over 50% of the territories within the District's original jurisdiction, including areas between Aurora, Batavia and North Aurora. Tr. pp. 35-39.
27. Despite the annexations, the District remained in existence throughout the 1996 assessment year. It performed various administrative functions throughout that time, such as levying and collecting taxes for those portions of the District that did not lie within the city of Aurora. *Id.*
28. The District applied an unspecified amount<sup>10</sup> of the revenues it collected through taxation to expenses associated with discharging its administrative responsibilities. It

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10. The amounts are unspecified because the District did not submit any financial statements.



paid the remainder to the City in exchange for fire protection services to all territories within the District, including those the City had not annexed. *Id.*

E. The District's Leasehold Interest and Use of the Subject Property

29. The District holds its leasehold interest in the subject property pursuant to an office lease dated January 1, 1996. This lease names the Center as lessor, the District as lessee. It is silent as to which party is liable for payment of real estate taxes but otherwise provides, in substance, as follows:

- A. The lease is to run from January 1, 1996 until December 31, 2001;
- B. The District is to pay monthly cash rentals in the amount of \$666.67, which represents fair market value for the demised premises, throughout the term of the lease;
- C. The District is to receive: (1) office occupancy privileges; (2) water service to the Center's standard fixtures; (4) heat; and (5) elevator service in exchange for the rental payments;

- D. The District may neither sublet the leasehold  
nor transfer its interest therein by other means  
without the express written consent of the  
Center;
- E. The District agrees to pay 1/3 of all heating and  
lighting costs for the entire building as such  
expenses fall due.

Applicant Ex. No. 3; Tr. pp. 51-52.

30. The office that the District occupies pursuant to the lease is an 800 square foot area located on the second floor of the building. Tr. pp. 42-43.

31. The District kept its records in the office during 1996. It also used the leasehold for public meetings and other purposes connected with fulfilling its administrative responsibilities throughout that time. Tr. pp. 50-51, 54, 103.

#### **CONCLUSIONS OF LAW:**

An examination of the record establishes that: (1) the Center has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting its fee interest in the subject property from 1996 real estate taxes under 35 **ILCS** 200/15-65; and that (2) the District's leasehold interest in the subject property does not qualify for exemption from 1996 real estate taxes under 35 **ILCS** 200/15-75. Accordingly, under the reasoning given below, the determination by the Department that the entire subject property does not qualify for exemption from 1996 real estate taxes should be affirmed. In support

thereof, I make the following conclusions:

A. Constitutional Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

B. The Center's Fee Interest

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1-3 *et seq.* The provisions of the Code that govern exemption of the Center's fee interest are contained in the following excerpt from Section 15-65:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity[.]

35 ILCS 15-65.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

The Center is currently seeking exemption under the statutory provisions that pertain to "institutions of public charity." Consequently, it must prove that the subject property was: (1) owned by an "institution of public charity[;]" and, (2) "actually and exclusively used for charitable or beneficent purposes," during the 1996 assessment year. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

The ownership question hinges on whether applicant qualifies as an "institution of public charity" within the meaning of Section 200/15-65. That inquiry depends, in part, on the application of the following definition:

charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

Crerar v. Williams, 145 Ill. 625, 643 (1893).

In Korzen, *supra*, the Illinois Supreme Court set forth five "distinctive characteristics" that effectuate this definition. These attributes are that all "institutions of public charity:"

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it; and,
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

*Id.* at 157.

These attributes are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995).

#### 1. Lack of Exempt Ownership

The first step in determining whether an organization is charitable is to consider the provisions of its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987). In this case, the Center submitted only one form of organizational document, that being its Articles of Incorporation and the amendments thereto.

These documents do not contain any specific wording or reference to charity. On more than one occasion, Illinois courts have indicated that lack of such wording in organizational

documents can provide evidence that the applicant is not in fact organized for exempt purposes. People ex. rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991). More importantly, the Center's Articles of Incorporation are completely devoid of any provision that accommodates those who can not afford to pay the rental fees it charges. Small v. Pangle, 60 Ill.2d 510 (1975).

The testimony of Phillip J. Gette, a member of the Center's governing board, leads me to conclude that the Center does not make such accommodations, except on a limited and discretionary basis. Mr. Gette testified that:

- Q. [By the Center's counsel] And is the center available to all members of the community without any kind of membership barriers?
- A. [By Mr. Gette] Anybody in the community got the right to use it *providing that* they pay the rent fee or if it's a church or group organization, they want to use it free, that's up -- between the community center trustees.

Whatever you want to call them, *its up to them to decide that*.

Tr. pp. 78-79. [Emphasis added].

This testimony reveals that the Center's primary organizational objective is to provide rental space for those who can afford to pay for it. Consequently, any "charity" the Center dispenses via free rentals are but an incidental by-product of discretionary business judgements made by its governing board.

Incidental acts of beneficence are legally insufficient to establish that the Center is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956), (hereinafter "Rogers Park"); Morton Temple Association, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987), (hereinafter "Morton Temple"); Albion Ruritan Club v. Department of

Revenue, 209 Ill. App. 3d 914 (5<sup>th</sup> Dist. 1991); Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4<sup>th</sup> Dist. 1993). However, this is not the Center's sole barrier to qualifying as an "institution of public charity" as the record does not contain any tax returns or financial statements that establishes its financial structure.

Without this evidence, it is difficult for me to determine whether applicant satisfies the financial requirements contained in part two of the test articulated in Korzen. Nevertheless, the testimonial evidence which the Center did introduce on this point (*see*, tr. pp. 74-75, 77, 87-90, 100) fails to establish that the Center derived revenues from any source other than rental income.

The record also fails to disclose that the Center made any "charitable" disbursements or spent any of the income it received on anything else other than building maintenance costs. *Accord*, Rogers Park, *supra*; Morton Temple, *supra*. Under these circumstances, I conclude that the Center's financial structure is more akin to that of a commercial landlord than an "institution of public charity". Therefore, those portions of the Department's determination that denied the Center's fee interest exemption from 1996 real estate taxes due to lack of exempt ownership should be affirmed.

## 2. Lack of Exempt Use

Analysis of the use issue begins with recognition of the fundamental principle that the word "exclusively" when used in Section 15-65 and other exemption statutes means the primary use to which real estate is put. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). Therefore, incidental or secondary uses are not determinative of a property's exempt status. *Id.*

In this case, the Center's secretary/treasurer, Evelyn Essling, testified that the Center allowed various community groups, such as the Northeast Neighbors, Neighborhood Watch and the Knights of Columbus, to use the first floor free of charge. Tr. pp. 93-95. This testimony

provides some evidence of exempt use. However, it does not outweigh evidence provided by Mr. Gette, who testified that: (1) community members can use the first floor "*providing that*" they pay the rental fee; and (2) the decision to permit free rentals is one that rests solely within the discretion of the Center's governing board. Tr. pp. 78-79.

The conditional nature of the words "providing that", together with lack of uniformity inherent in discretionary business judgments, raise doubts as to whether those that received free rentals were the primary users of the first floor, at least vis-à-vis those that paid rent. Such doubts must be resolved in favor of taxation. Consequently, the Center has failed to prove that the first floor was "exclusively used for charitable or beneficent purposes," as required by Section 15-65 of the Property Tax Code during the 1996 assessment year. *Accord, People ex. rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 140 (1924); *Salvation Army v. Department of Revenue*, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). (Holding that properties used primarily for purpose of producing income for their owners are not used for exempt purposes even though the owners apply all rental proceeds to beneficent purposes). Therefore, those portions of the Department's determination that denied the Center's fee interest exemption from 1996 real estate taxes due to lack of exempt use should be affirmed.

C. The District's Leasehold Interest

The statutory provisions that govern exemption of the District's leasehold interest are contained in Section 15-75 of the Property Tax Code. These provisions are subject to the same rules of construction set forth, *supra*, and state that "all market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes are exempt" from real estate taxation. 35 ILCS 200/15-75.



This provision contains three important limitations: first, the exemption only applies to certain types of property, namely "market houses, public squares and other public grounds"; second, such properties must be owned by a specific entity, to wit, a municipal corporation; and third, such properties must be used in a specific manner, that being "exclusively for public purposes."

In this case, the District did not hold any ownership interest in the subject property during the 1996 assessment year. Rather, its interest was limited to that of a leaseholder throughout that time.

Such an interest is legally insufficient to satisfy the statutory ownership requirement. *Accord*, North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967). (Property does not qualify for exemption unless it is owned and used in the manner prescribed by statute). Therefore, it of no import that the subject property was exempt, and met all the statutory qualifications, throughout the period in which it was actually owned by the District. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App. 3d 542 (1st Dist. 1981). (A determination of exempt or taxable status for one year is not *res judicata* for any other tax year even where ownership and use remain the same).

#### D. Final Considerations

##### 1. Separate Exemption of the Leasehold

In Children's Development Center v. Olson, 52 Ill. 2d 332 (1972) (hereinafter "Olson"), the Illinois Supreme Court held that a leasehold interest, such as the one held by the District, can be separately exempted from the underlying fee if: (1) the lessor qualifies as an exempt entity; and, (2) the lessee also qualifies as an exempt entity; and, (3) the lessee uses the demised

premises for purposes that would qualify as exempt if the lessee owed the allegedly exempt leasehold, provided that neither the lessor nor the lessee are profiting from the enterprise.

Olson is inapplicable herein, primarily because the Center-lessor fails to qualify for exempt status. Furthermore, the office lease is completely devoid of any provision making the District liable for real estate taxes. Absent such a provision, Section 9-175 of the Property Tax Code<sup>11</sup> imposes that liability on the Center-lessor, an entity whose status as an Illinois not for profit corporation provides it with a legal identity that is separate and distinct from that of the District-lessee.

The Center also is not the statutorily intended beneficiary of the exemption provisions pertaining to "municipal corporations." Those provisions are designed to protect a taxing authority, such as the District, from functional impediments attributable to "the inconsistency of taxing itself in order to raise money to pay over to itself, which money could be raised only by taxation." United States v. Hynes, et al, 20 F. 3d 1437 (7<sup>th</sup> Cir. 1994).

Based on the above considerations, I conclude that separate exemption of the leasehold would effectively relieve the Center of its otherwise valid obligation to pay property taxes merely because its management made a business decision to lease office space to an exempt entity. *Accord*, Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1<sup>st</sup> Dist. 1988 ). (Private individual/owner denied property tax exemption even though he leased subject property to a religious organization that used leasehold for exempt religious and school purposes). Therefore, the District's leasehold interest is not subject to exemption under Olson.

## 2. Cases Cited by the Center

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11. Section 9-175 states, in relevant part, that "the owner of property on January 1 in any year shall be liable for taxes of that year." 35 **ILCS** 200/9-175.

None of the cases cited by the Center alter any of the preceding conclusions. In People ex rel Hellyer v. Morton, 373 Ill. 72 (1940) (hereinafter "Morton") the sole issue decided was whether the terms of a trust that created the Morton Arboretum (hereinafter the "Arboretum") violated the then-applicable criteria for determining whether the Arboretum qualified as an "institution of public charity".

The court held in the negative and found the property at issue therein to be exempt from real estate taxation. However, neither its holding nor its reasoning are applicable herein, for the Center does not qualify as an "institution of public charity" because its organizational documents fail to accommodate those who cannot afford to pay the rental fees it charges. *See, supra*, at 14-15. Moreover, unlike the Arboretum, (which did not charge *any* rentals to those who used its property), the Center failed to prove that the first floor was primarily or "exclusively used" by anyone other than those who could afford to pay such rentals. *See, supra*, at 15. Therefore, I find Morton to be distinguishable from the present case.

The Center also cites Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4<sup>th</sup> Dist. 1988). There, the court held that a sports complex qualified for exemption under the then-applicable version of Section 15-65. The complex was owned by a not-for-profit corporation which submitted a financial statement demonstrating that its primary source of income was contributions and that it received less than 1% of its total revenues<sup>12</sup> from renting sports fields located in the complex. Decatur Sports Foundation, *supra* at 701.

Here, however, the Center did not submit any financial statements. More importantly, the testimonial evidence regarding its financials fails to establish that it derives income from any source *other than* rental income. *See, supra* at p. 16. Under these circumstances, I must reiterate

that the Center's financial structure is more akin to that of a landlord than an "institution of public charity." Therefore, the Center's reliance on Decatur Sports Foundation is misplaced.

### 3. Summary

The Center's fee interest fails to qualify for exemption from 1996 real estate taxes under Section 15-65 of the Property Tax Code because the Center: (1) does not qualify as an "institution of public charity" within the meaning of that provision; and (2) failed to prove that the first floor was "exclusively used for charitable or beneficent purposes" as required by the plain meaning of Section 15-65. Therefore, that portion of the Department's determination that denied the Center's fee interest exemption from 1996 real estate taxes should be affirmed.

The District's leasehold does not qualify for exemption from 1996 real estate taxes under Section 15-75 of the Property Tax Code because it fails to satisfy the ownership requirement set forth therein. Therefore, that portion of the Department's determination which denied the leasehold exemption from 1996 real estate taxes should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the entirety of Kane County Parcel Index Numbers 15-11-252-002 and 15-11-252-003 not be exempt from 1996 real estate taxes.

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Date

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Alan I. Marcus  
Administrative Law Judge

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12. \$375.00 from field rentals/\$92,406.00 total revenues = 0.0041 (rounded ) or less than 1%. Decatur Sports Foundation, *supra*, at 701